IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4482 of 1997
With
SPECIAL CIVIL APPLICATION No. 6779 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI BABUBHAI SHAH - Petitioner(s)
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION LTD & 2 - Respondent(s)

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Appearance :
MR YN OZA for Petitioner(s) : 1,
MR GIRISH D BHATT for Respondent(s) : 1 - 2.
MR JB PARDIWALA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 08/02/2007

ORAL JUDGMENT

1. As both the matters are inter-connected and

common questions arise for consideration, they are being considered by this common judgement.

2. The petitioners are the persons, who have been allotted plots in GIDC Phase-II for residential purpose. As per the petitioners, the area of Phase-II is marked in the development plan for consideration of residential bungalows of the entrepreneur or the industrialist, who has established industry in GIDC, Vapi. As per the petitioners, the aforesaid scheme was floated with a view to provide facilities to the entrepreneurs to have residential accommodation near to the industry and on the basis of such scheme, the petitioners were allotted plots and as per the petitioners, they have also constructed residential bungalows.

3. Plot No.110/H-II appears to have been allotted to Respondent No.3 and as per the petitioners, the allotment is made to respondent No.3 in capacity as the Director of Chhabaria Textiles Processing Pvt. Ltd. The contention of the petitioners is that vide Condition No.8 of the allotment letter dated 16.8.1995, copy whereof

is produced at Annexure “B”, the same is for construction of residential bungalow and is to be used for residential premises, whereas respondent No.3 contemplated to make construction of apartments over the said plot No.110. The grievance of the petitioners are that they made representation and entered into correspondences with the officers of GIDC up to the level of Superintending Engineer, however, no actions were taken and respondent No.3 proceeded with the construction and, therefore, the present petitions.

4. I have heard Mr.Oza, learned Counsel appearing for the petitioners in both the petitions, Mr.G.D.Bhatt, learned Counsel for respondents No.1 and 2 and Mr.Rushap Shah for Mr.Pardiwala, learned Counsel for respondent No.3.

5. Upon hearing the learned Advocates appearing for both the sides, it appears that the principal grievances raised on behalf of the petitioners are:

(a) The allotment of the plot was for residential bungalows and, therefore,

apartments could not be constructed.

(b) The respondent No.3 has proceeded for construction of apartment in collusion with the officers of GIDC.

(c) The proposed construction of apartment is in contravention to the development plan for Phase-II prepared by GIDC.

6. Therefore, based on the aforesaid grievances, it has been contended on behalf of the petitioners that the appropriate directions may be given to respondent Nos.1 and 2 to cancel the allotment of plot No.110 to respondent No.3 and it is further prayed to issue directions to respondent Nos.1 and 2 to take immediate steps against respondent No.3 and also for cancellation of the plan for construction of the flats/apartments over Plot No.110.

7. The Executive Engineer, Mr.B.C.Warli has filed the affidavit-in-reply on behalf of respondents No.1 and 2 and it has been contended, inter alia, that the allotment is not only for residential bungalow and in the submission of

Mr.Bhatt, learned Counsel for GIDC, the allotment letter would be of no further consequences in view of the agreement having entered into by the GIDC and the person concerned. It has been submitted on behalf of GIDC that as the condition of licence agreement provided for residential accommodation for the staff of the entrepreneur, it cannot be read as residential accommodation through a bungalow only, but it would also include the residential apartment or, in any case, the construction of residential apartment cannot be said as prohibited under the conditions of the licence agreement. The other allegations including that of the collusion by the officers of GIDC with respondent No.3 are denied.

8. It appears that when this Court considered the matter, it was at the stage when the representations of the petitioners were not responded and the respondent No.3 wanted to proceed with the construction. On 26.6.1997 when this Court issued the notice, the status-quo was ordered to be maintained and the said order

has continued till today. Mr.Bhatt, learned Counsel appearing for GIDC has stated before the Court that as per his instruction and the photographs received by him from the Officers of GIDC, the construction has not proceeded further and only some pillars, which were already constructed prior to the intimation of the order of this Court have continued. Therefore, this Court is required to examine the matter at this stage. Mr.Bhatt has also submitted that the plans were already sanctioned by the competent officer of GIDC on 3.3.1997.

9. Considering the facts and circumstances, it appears that the grievances as sought to be canvassed on behalf of the petitioners at this stage can better be examined by the higher officer of GIDC since the grievances on the part of the petitioners are that the complaints were made to the officers of the GIDC up to the level of Superintending engineer and no action and, therefore, this petitions. As such when the complaint is for callous approach on the part of some officer of lower cadre, the Court would

normally relegate the petitioners to either approach before the officer of higher cadre, but as now the matter is at the stage of final hearing, I find that when the record of the petition is at large available with GIDC, it would be just and proper to direct officer of the higher rank of GIDC to look into the matter.

10. It hardly deserves to be recorded that in the matter of of allotment of the land under the Scheme floated by GIDC, GIDC has to keep in mind the principal object of this Scheme and the relationship of the parties, including the licencee, who is respondent No.3 herein , essentially governed by the terms and conditions of the licence agreement. However, while considering the question of approving the plan for construction, it would be required for GIDC to keep in view of the scheme, development plan, the binding rules and regulations and other relevant aspects, which may be germane to the exercise of the power as per the licence agreement. If any officers of GIDC have remained careless in discharging their duty or

have acted in collusion, such cannot be tolerated and it would be required for the officers of the higher rank to take a corrective measures, as may be permissible in law.

11. In view of the above, I find that the following directions shall meet with the ends of justice:

(i) The Managing Director of GIDC shall examine the matter in light of the observations made by this Court in the present judgement. While taking decision, the Managing Director shall also give opportunity of hearing to the petitioners as well as respondent No.3.

(ii) The Managing Director of GIDC, after hearing both the sides, shall pass appropriate orders on the aspects connected with the case, including for approving the construction permission granted or cancellation permission granted. As a necessary corollary, it would be also open to pass consequential order, as may be permissible in law.

12. The aforesaid exercise shall be completed

within a period of three months from the date of receipt of the order of this Court. Till the order is passed by the Managing Director of GIDC as indicated hereinabove, interim order of status-quo, which was granted and has remained in operation, shall continue to remain in operation. The petitioners as well as respondent No.3 shall cooperate with the Managing Director of GIDC in complying with the directions of this Court.

13. The petitions are partly allowed in terms of the aforesaid directions. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

9.2.2007 **(Jayant Patel, J.)**

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